

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

2022 ND 114

Cody Michael Atkins,	Petitioner and Appellant
v.	
State of North Dakota,	Respondent and Appellee

No. 20220006

Appeal from the District Court of Grand Forks County, Northeast Central Judicial District, the Honorable John A. Thelen, Judge.

AFFIRMED.

Per Curiam.

Stormy R. Vickers, Fargo, N.D., and Alexis Madlom, under the Rule on Limited Practice of Law by Law Students, Fargo, N.D., for petitioner and appellant; submitted on brief.

Justine S. Hesselbart, Assistant State's Attorney, Grand Forks, N.D., for respondent and appellee; submitted on brief.

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Per Curiam.

[¶1] Cody Atkins appeals from orders denying his application for postconviction relief and concluding he is a vexatious litigant. In 2015, Atkins pled guilty to gross sexual imposition. He appealed the criminal judgment, and we affirmed. *State v. Atkins*, 2016 ND 13, ¶ 10, 873 N.W.2d 676. Since 2016, Atkins has filed seven applications for postconviction relief. *See Atkins v. State*, 2021 ND 83, ¶¶ 2-5, 959 N.W.2d 588. In June 2021, Atkins once again petitioned for postconviction relief, alleging newly discovered evidence, actual innocence, a *Brady* violation, and an invalid guilty plea. After a hearing, the district court denied relief under res judicata and misuse of process, N.D.C.C. § 29-32.1-12. The presiding judge of the judicial district concluded Atkins is a vexatious litigant and entered a pre-filing order under N.D. Sup. Ct. Admin. R. 58 requiring Atkins to obtain leave of the court prior to filing any new litigation or documents.

[¶2] On appeal, Atkins argues the district court erred in denying him an evidentiary hearing, denying his postconviction relief application, and concluding he is a vexatious litigant. To the extent Atkins was limited in presenting evidence at the postconviction hearing, we conclude the court did not abuse its discretion. We conclude the court did not err in denying postconviction relief under res judicata and misuse of process. *Klose v. State*, 2008 ND 143, ¶ 10, 752 N.W.2d 192 (res judicata precludes claims or variations of claims raised in previous proceedings, and misuse of process precludes claims that could have been raised in a prior postconviction proceeding or other proceeding). Further, the court did not abuse its discretion in concluding Atkins is a vexatious litigant and entering the pre-filing order. We summarily affirm under N.D.R.App.P. 35.1(a)(4) and (7).

[¶3] Daniel J. Crothers, Acting C.J.
Gerald W. VandeWalle
Lisa Fair McEvers

Jerod E. Tufte
Gary H. Lee, D.J.

[¶4] The Honorable Gary H. Lee, D.J., sitting in place of Jensen, C.J., disqualified.